STATE OF MICHIGAN

COURT OF APPEALS

DARREN CHRETIEN, Plaintiff-Appellant,	UNPUBLISHED June 8, 2001
v	No. 221593 Oakland Circuit Court
LAKESHORE MOTEL and JAMES TOUHY, Defendants-Appellees.	LC No. 98-007234-NO

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

Plaintiff went to the defendant Lakeshore Hotel to check out rooms available on Valentine's Day. When he arrived at the motel, the sidewalk was icy. He proceeded to the manager's office by walking on the grass instead. He again walked on the grass when he followed the manger to view the first room. The land had a downward slope and at the top of the slope, plaintiff slipped and fell on the ice and snow.

Plaintiff filed this premises liability action, seeking damages for his injuries. Finding that the danger was open and obvious and plaintiff had intentionally chosen to encounter it, the court granted defendant's motion for summary disposition and dismissed the action.

II. The Duty Owed to Plaintiff

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence

establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co,* 460 Mich 446, 455; 597 NW2d 28 (1999).

Plaintiff was an invitee in that he was on defendant's premises for a commercial purpose. *Stiff v Holland Abundant Life Fellowship,* 462 Mich 591, 597-598, 604; 614 NW2d 88 (2000), amended ____ Mich ___[1]. A landowner is subject to liability for physical harm caused to his invitees by a condition on the land only if the owner (a) knows of, or by the exercise of reasonable care would discover, the condition and should realize that it involves an unreasonable risk of harm to his invitees; (b) should expect that his invitees will not discover or realize the danger or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect his invitees against the danger. *Lawrenchuk v Riverside Arena, Inc,* 214 Mich App 431, 432-433; 542 NW2d 612 (1995). This duty is not absolute. *Douglas v Elba, Inc,* 184 Mich App 160, 163; 457 NW2d 117 (1990). It does not extend to conditions from which an unreasonable risk of harm cannot be anticipated or to open and obvious dangers. *Id*.; *Hammack v Lutheran Social Services of Michigan,* 211 Mich App 1, 6; 535 NW2d 215 (1995). Where the danger is known to the invitee or is so obvious that the invitee might reasonably be expected to discover it, the invitor owes no duty to protect or warn the invitee unless the invitor should anticipate the harm or alternatively, the risk of harm remains unreasonable despite the invitee's knowledge of it. *Bertrand v Alan Ford, Inc,* 449 Mich 606, 611; 537 NW2d 185 (1995); *Riddle v McLouth Steel Products Corp,* 440 Mich 85, 96; 485 NW2d 676 (1992).

"An invitor has a duty to take reasonable measures within a reasonable time after an accumulation of snow and ice to diminish the hazard of injury to an invitee." *Orel v Uni-Rak Sales Co, Inc,* 454 Mich 564, 567; 563 NW2d 241 (1997); *Anderson v Wiegand,* 223 Mich App 549, 553-554; 567 NW2d 452 (1997). That duty is not eliminated simply because the danger presented by ice and snow is obvious:

> [W]e reject the prominently cited notion that ice and snow hazards are obvious to all and therefore may not give rise to liability. While the invitor is not an absolute insurer of the safety of the invitee, the invitor has a duty to exercise reasonable care to diminish the hazards of ice and snow accumulation. . . . As such duty pertains to ice and snow accumulations, it will require that reasonable measures be taken within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury to the invitee. [*Quinlivan v Great Atlantic & Pacific Tea Co, Inc,* 395 Mich 244, 261; 235 NW2d 732 (1975).]

The evidence presented showed that the walkways around defendants' premises were icy. Plaintiff therefore chose to walk on the grass which, although similarly icy, appeared safer than the walkway. If plaintiff's only choice was to encounter the icy conditions on the property, be they on the walkways or on the grass, or turn around and leave because there was no safe place to walk, the open and obvious nature of the danger created by the icy grass does not insulate defendants from liability because "the risk of harm remains unreasonable, despite its obviousness

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[1] In September of 2000, the Supreme Court remanded this matter for further consideration and determination.

or despite knowledge of it by the invitee." *Bertrand, supra,* at 611. Therefore, the trial court erred by granting defendants' motion for summary disposition.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly